



# California Fair Political Practices Commission

December 14, 1989

Dennis J. Bauer  
3675 Ventura Canyon Avenue  
Sherman Oaks, CA 91423

Re: Your Request for Advice  
Our File No. A-89-640

Dear Mr. Bauer:

You have requested advice concerning the campaign provisions of the Political Reform Act.<sup>1</sup>

## QUESTIONS

- 1) Will the \$1,000 contribution and expenditure threshold for filing the Form 470 remain the same for candidates seeking elective office in 1990? Over what period is the threshold applied?
- 2) Is a separate campaign bank account required if you do not collect any contributions and use only personal funds?
- 3) For purposes of filing Form 470, what types of expenses should be included in calculating how much money has been spent on the campaign? Are the following included:
  - a) Filing fees and expenses related to gathering "in lieu of" filing fee signatures, including expenses incurred by volunteer signature gatherers?
  - b) Use of your personal or workplace telephone?
  - c) Travel expenses, such as hotel rooms, commercial transit fares, meals, rental cars, operation costs of your personal auto, and any travel expenses related to campaign volunteers?
- 4) Must personal funds to cover the costs of long distance telephone calls made from your home telephone be deposited into the campaign bank account and then be reimbursed to you?

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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5) Are travel expenses associated with having you appear on a television or radio program with all other candidates for the same office considered contributions to you if the media organization putting on the program pays for those expenses?

6) If you attend a rally put on by a political party for you and other candidates, has the political party made a contribution to you?

7) Have you received a contribution from a group that publishes literature endorsing your candidacy if you have not paid for nor requested inclusion in the literature? Are there legal means by which you can prohibit a group from including your name on slate mailers?

#### CONCLUSIONS

1) A candidate who will not raise or spend \$1,000 in the calendar year 1990 may file the Form 470 once covering the entire year. A candidate who receives contributions totaling \$1,000 or more or makes expenditures totaling \$1,000 or more during a calendar year must file periodic reports using the long form campaign statement (Form 490) and must establish a committee by filing a Statement of Organization (Form 410).

2) A separate bank account is required by a candidate for campaign expenses even if the candidate uses only personal funds. Within 24 hours after opening the campaign bank account, the candidate must file a Campaign Bank Account notice (Form 502). However, a candidate who will use personal funds to pay for filing and candidate statement fees only and will not expend ANY OTHER FUNDS, is not required to open a separate bank account or file Form 502.

3) A campaign expense is any payment made or expense incurred by a candidate for political purposes. Except as noted below, all of the expenses you have outlined must be included when calculating whether the \$1,000 threshold for filing Form 470 has been reached.

a) Personal funds of the candidate used to pay filing fees or fees for printing a statement of qualifications in the ballot are not counted for purposes of calculating the \$1,000 threshold for filing Form 470. However, such payments are campaign expenditures and, if you receive contributions totaling \$1,000 or more or make other campaign expenditures totaling \$1,000 or more, you must file the long form campaign disclosure statement (Form 490) and must disclose the filing fees and statement of qualification fees.

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b) Assets acquired by a candidate primarily for personal or non-political purposes, which are used only incidentally for political purposes, need not be counted toward the \$1,000 Form 470 threshold, nor are they required to be disclosed as non-monetary contributions or expenditures if the Form 490 is required. This includes personal assets such as your home telephone used to make local campaign calls or calls to public agencies to obtain materials or election information, and use of your personal automobile. However use of your telephone for long distance campaign calls, such as calling voters, must be counted as expenditures.

c) Volunteer personal services provided to a candidate, and payments made by volunteers for their own travel expenses, if the payments are made voluntarily without any understanding or agreement that they will be repaid, need not be counted toward the \$1,000 threshold for filing Form 470.

4) You are not required to deposit personal funds into the campaign bank account and then reimburse yourself for long distance phone calls you make from your personal phone.

5) The payment of transportation expenses received by candidates in connection with an appearance on a television or radio program are contributions to the candidates.

6) If the purpose of a rally held by a political party is to introduce the audience to a select number of candidates or to have selected candidates present themselves, then the total cost of the rally would be a contribution from the political party to the candidates in attendance.

7) A candidate has not received a contribution from a group that publishes an endorsement unless the endorsement was made at the behest of the candidate. "At the behest" means a payment made "under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of a candidate...." (Regulation 18215.)

The Act does not restrict or provide any method by which a candidate can prohibit any group from endorsing or advertising its endorsements of candidates.

#### FACTS

You are considering running for a statewide office in 1990. You intend to use only your own personal funds and will not accept any outside contributions. In addition, you intend to spend less than \$1,000 in the calendar year.

ANALYSIS

1) Section 84206 allows candidates and officeholders who receive contributions totaling less than \$1,000 and who make expenditures totaling less than \$1,000 in a calendar year (January 1 - December 31) to file a short form campaign statement (Form 470). This section will still be in effect in 1990.

2) Section 85201 requires candidates to make all campaign expenditures from a separate campaign bank account established to support their candidacies. Within 24 hours of establishing a campaign bank account, the candidate must notify the Commission of the name of the financial institution, the specific location, and the account number by filing the Form 502. (Section 85201(b).) However, if a candidate uses only personal funds to pay for filing fees or candidate's statement fees and no other funds will be received or expended for the campaign, no separate campaign bank account is required. (Regulation 18522, copy enclosed.) Please note, though, that if any other campaign expenses will be paid by the candidate, or any contributions will be received, a campaign bank account must be established and payments for a filing fee or for a statement of qualifications must be paid from the campaign bank account. (Section 85201(e).)

3) Section 82025 defines an expenditure as:

a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes.

Regulation 18225 (copy enclosed) states that:

A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate  
... or

(2) Made by:

(A) A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an office holder;

(B) A controlled committee;...

Thus, any payment made by a candidate to support his or her candidacy, or made by a candidate's committee or out of a candidate's campaign bank account is a campaign expense. However, for purposes of calculating the \$1,000 threshold for filing Form 470, Section 84206(b) excludes payments from the candidate's personal funds for the filing fee and statement of qualifications.

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In addition, Section 82015 excludes from the definition of "contribution":

...volunteer personal services or payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

As noted above, certain incidental use of assets acquired by a candidate for personal non-political purposes also need not be counted toward the Form 470 \$1,000 threshold.

4) Section 85201 requires a candidate to deposit all personal funds to be used for his or her campaign into the campaign bank account and to make all campaign expenditures from that account. However, we do not believe Section 85201 was intended to prohibit a candidate from using his or her personal telephone for campaign activities, or to require the candidate to deposit personal funds into the campaign account to pay for campaign calls made from a personal telephone. As noted above, certain long distance charges are expenditures which must be counted toward the \$1,000 threshold for filing Form 470. In addition, such charges must be disclosed as non-monetary contributions from the candidate when the Form 490 is required to be filed.

5-7) "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. (Section 82015.)

Section 82015 also sets out circumstances under which a candidate or committee has received a reportable contribution. The definition includes:

... the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office;...

We believe this provision was included in the definition of contribution for the purpose of ensuring that the public have access to information concerning all candidates for an elective office. Without this provision, the media would be restricted to the contribution limits established by Proposition 73. (Sections 85301-85303, 85305.) This would effectively eliminate the media's ability to produce and air candidate forums. These forums serve the interests of the public in receiving information needed to

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make an informed decision at the polls. (Morten Advice Letter, No. A-88-293, copy enclosed.) However, the Act does not provide for an exemption for travel costs related to transporting the candidates to the site where the media event will take place. These costs are considered contributions and are subject to the contribution limitation provisions of the Act.<sup>2</sup>

Regarding a rally or candidate forum sponsored by a political party or other group, Regulation 18215 provides that any payment made at the behest of the candidate is a contribution to the candidate.

A payment is made at the behest of a candidate when the payment is made:

"under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of a candidate..."

Regulation 18215(b).

The costs in connection with a rally put on by a partisan organization are made at the behest of the attending candidates and, therefore, the costs attributable to the event are considered to be in-kind contributions to the participating candidates. (Lippert Advice Letter, No. A-87-172, copy enclosed.) These contributions are subject to the contribution limitation provisions of the Act unless the persons attending the rally are limited to members of the sponsoring organization. (See *Service Employees International Union v. FPCC*, Case No. 89-0433.)

If a group publishes an endorsement but has not done so at your behest, you are not required to report the endorsement as a contribution.

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<sup>2</sup> The Act limits contributions from a "person" to a candidate to \$1,000 per fiscal year (July 1 - June 30). A "person" includes an individual, business entity, or other organization. Contributions from a "political committee" to a candidate are limited to \$2,500 per fiscal year, and contributions from a political party or a "broad based political committee" to a candidate are limited to \$5,000 per fiscal year. A "political committee" is a group of persons that receives contributions from two or more persons and makes contributions to candidates. (Section 85102(c).) Enclosed is a brochure which summarizes these provisions.

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If you have additional questions, please contact me at (916)  
322-5662.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Kevin S. Braaten-Moen  
Political Reform Consultant

Enclosures

FPPC  
Nov 6 2 42 PM '89

3675 Ventura Canyon Avenue  
Sherman Oaks, California 91423  
November 2, 1989  
Telephone (818) 785-0348 (Day)

California Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, California 95814

Attention: Technical and Legal Assistance

Gentlemen:

I am considering the possibility of running for a statewide office in the 1990 elections (most likely Lieutenant Governor). To help me handle and report any campaign expenses properly, could you please answer the following questions?

I plan to spend only my own personal funds and accept no outside campaign contributions. Furthermore, I plan to keep campaign spending low so that only the Short Form report of campaign spending needs to be filed (I believe that it is currently for spending under \$1,000.00 per year).

Questions --

- 1 -- What will the campaign spending limit be for filing the Short Form report in 1990 (\$1,000.00 or something else)? Is that spending amount applicable for a calendar year, a fiscal year, or for each election?
- 2 -- Since I would be using only my own personal funds, is it necessary to open a separate campaign account or can I pay any expenses out of my current personal account?
- 3 -- What is and is not a campaign expense, and what should and should not be included in figuring the Short Form spending limit (\$1,000.00 or whatever it is)? In answering this question, please tell me the proper treatment of the following among other things:
  - 3A -- The filing fee for the office and/or expenses related to personally gathering in lieu of filing fee signatures (such as travel to county clerks offices throughout the state to pick up and file official forms for the signatures and related telephone and postage expenses. Also what about similar expenses of any friends volunteering to help gather signatures?
  - 3B -- Expenses of local and long distance telephone calls made throughout the state on my home telephone or a work personal telephone. What about calls to state and county elections officials for election information and to obtain voter registration forms to distribute to potential voters?
  - 3C -- Expenses for travel by the candidate throughout the state. Please clarify Government Code Section 82015. In this regard, please include what is the proper treatment of a candidate's travel expenses for hotel rooms, airline fares, bus fares,



meals away from home (restaurants or just buying food at a grocery store), rental cars and gasoline. Also what about use of the candidate's personal auto (whether owned, rented, or leased) and gasoline for it when used to travel locally and/or throughout the state? Finally, please answer these same travel expense questions for a family member or friend traveling with the candidate whether or not they would do any campaigning or just distribute voter registration forms.

- 4 - If it is necessary to open a separate campaign account, and if certain expenses like telephone calls made on my home telephone are considered campaign expenses, must I then reimburse myself for these expenses from my own money in the campaign account? What is the proper way to handle campaign expenses which are hard to separate from and included with normal personal expenses often on one bill?
- 5 - If a media organization (like a television station) wanted to pay each candidate for an office for travel expenses to appear on a program covering all of those candidates, is that considered a campaign contribution by the media organization to the candidate?
- 6 - If a group or political party organizes a rally or forum for several candidates, is it correct that a candidate appearing at such a rally has received no contribution as long as the candidate pays his own way to the rally and the rally is paid for completely by the organizing group or political party?
- 7 - If a group or political party publishes literature listing several candidates and/or issues supported, paid entirely by the political party and/or group, is it correct that a candidate listed who has not requested being listed or paid for such listing has received no campaign contribution. Also, is there any legal way a candidate can prohibit a group or political party from including his name on "slate" mailers where the candidate disagrees with the other endorsements?

Please inform me of any other information that you feel will help me to plan and report campaign expenses properly. Also please inform me of any changes in the law that might occur. I must rely on you to give me legally correct answers.

Thank you very much for all of your help. If you need to ask me any questions please call me at (818) 785-0348. Your early reply will be appreciated.

Sincerely,



Dennis J. Bauer



# California Fair Political Practices Commission

November 9, 1989

Dennis J. Bauer  
3675 Ventura Canyon Avenue  
Sherman Oaks, CA 91423

Re: Letter No. 89-640

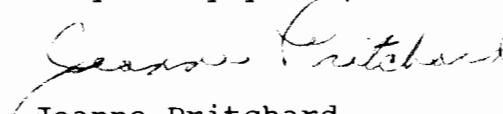
Dear Mr. Bauer:

Your letter requesting advice under the Political Reform Act was received on November 6, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

  
Jeanne Pritchard  
Chief Technical Assistance  
and Analysis Division

JP:plh